

SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

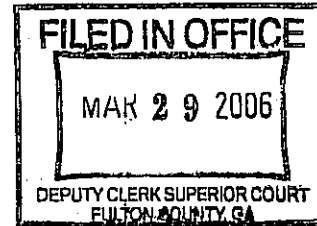
CITY OF ATLANTA, GEORGIA,

Plaintiff,

vs.

HOTELS.COM, L.P.; HOTELS.COM
GP, LLC; HOTWIRE, INC.; CHEAP
TICKETS INC.; CENDANT TRAVEL
DISTRIBUTION SERVICES GROUP,
INC.; EXPEDIA, INC.;
INTERNETWORK PUBLISHING
CORP. (d/b/a LODGING.COM);
LOWESTFARE.COM, INC.;
ONETRAVEL HOLDINGS, INC.;
ONETRAVEL, INC.; ORBITZ, INC.;
ORBITZ, LLC; PRICELINE.COM,
INC., SITE59.COM, LLC;
TRAVELOCITY.COM, INC.,
TRAVELOCITY.COM, LP, and
TRAVELNOW.COM, INC.

Defendants.



CIVIL ACTION NO.:

2006CV114732

VERIFIED COMPLAINT SEEKING INJUNCTIVE RELIEF AND DAMAGES

Plaintiff, the City of Atlanta, Georgia (the "City"), by and through its undersigned attorneys, brings this Verified Complaint Seeking Injunctive Relief (the "Complaint") against the Defendants and alleges as follows:

INTRODUCTION

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to as "Rooms") located within the City's tax district. Hotel/Motel Taxes collected by the City provide essential funds for vital public purposes, such as the promotion of the City's tourism and convention industries.

2. Defendants are third-party sellers and resellers of Rooms located within the City that are subject to the Hotel/Motel Tax. Defendants rent these Rooms to the general public acting as sellers of Rooms previously purchased at wholesale rates from the hotels or as agents who assume the marketing and sales function of the hotels and sell confirmation vouchers verifying their customers' right to use the Rooms. For purposes of marketing and sales, Defendants act as hotel operators, or at the very least, as agents of the hotels. As is the case with all sales of Rooms subject to the Hotel/Motel Tax, the applicable tax rate for Rooms sold by Defendants is 7 percent of the total amount paid by the hotel patron for the right to use the Room. As hotel operators for purposes of sales and marketing—or at the very least as agents for operators—Defendants are duty bound to collect this full amount from their customers on behalf of the City, and then to remit all taxes collected to the City. Defendants actually do collect an amount, described to their customers as "taxes and fees", that is sufficient to cover the Hotel/Motel Tax and all other applicable taxes on the full Room price.

3. While Defendants regularly collect Hotel/Motel Taxes, as described more fully in this Complaint, they do not remit the full amount that they collect, or the full amount that is required under the Hotel/Motel Tax ordinance. As a matter of regular business practice, and by their own admission, Defendants remit nothing in tax and instead retain for themselves a portion of what should be paid as tax as part of their own profit. When Defendants act as merchants renting previously purchased Rooms at a

markup, Defendants do not remit any taxes on the markup portion of the price. When Defendants act as agents for the hotels, they do not remit taxes on the amount they retain as a “fee” from the hotel. In both cases, Defendants remit, indirectly through the hotel, Hotel/Motel Taxes only on the net amount received by the hotel, an arbitrary amount that is unknown to the customer and unrelated to the actual Room price paid.

4. Defendants’ failure to remit these funds that they have collected from consumers as tax in connection with hotel Room sales and that are owed to the City is without justification and a clear violation of the City’s Hotel/Motel Tax ordinance. Defendants themselves have acknowledged that they do not believe they are liable for payment of Hotel/Motel Taxes and therefore do not pay it. Some Defendants have further admitted, in filings with the Securities and Exchange Commission, that they have established reserves in the event that their “interpretation” of the tax laws is incorrect and they are ordered to pay taxes. The amount of these reserves is unknown.

5. Furthermore, the Defendants carefully hide their failure to remit all appropriate taxes from their own customers, who are led to believe that the amount they pay in “taxes and fees” covers all appropriate Hotel/Motel taxes on the quoted Room rate, and that these taxes are actually being paid to the City, when in fact the Defendants are pocketing a significant portion of the taxes the customers have paid. Defendants hide this practice from their customers by charging a bundled amount in “taxes and fees” that is more than sufficient to cover all applicable taxes, without disclosing the applicable tax rate, or the amount of tax that is actually remitted.

6. Similarly, Defendants maintain strict secrecy regarding the amounts they

actually pay for the rooms that they resell as merchants and the pre-tax fees they collect from hotels when acting as sellers or agents. Defendants do not tell their customers the net price for the Room that the hotel receives, and do not tell the hotel the retail price that the Room sold for. Defendants also hide this information from the City. Even though they regularly act as operators with respect to the collection of taxes from hotel patrons and are therefore subject to registration and reporting requirements set forth in the Hotel/Motel Tax ordinance, Defendants have never registered as taxpayers and have never filed Hotel/Motel Tax returns with the City.

7. The Defendants' failure to remit the applicable Hotel/Motel Tax has deprived and continues to deprive the City and its residents of the full public benefit of taxes intended to promote tourism and trade in the City. Said failure to remit Hotel/Motel Taxes has also eroded the City's tax base and threatens to further erode the tax base as a larger percentage of hotel room bookings are made over the Internet. The City is entitled to injunctive relief to protect itself against this erosion and to protect the funding of tourism-related attractions and projects that serve a vital public interest.

PARTIES AND JURISDICTION

8. The City is a municipal corporation organized under the laws of the State of Georgia. Atlanta is the county seat of Fulton County.

9. Defendant Hotels.com, L.P. is a Delaware limited partnership with its principal place of business in Dallas, Texas.

10. Defendant Hotels.com GP, LLC is a Texas limited liability company with its principal place of business in Dallas, Texas.

11. Defendant Hotwire, Inc. is a Delaware corporation with its principal place

of business in San Francisco, California.

12. Defendant Cheap Tickets, Inc. is a Delaware limited liability company with its principal place of business in Chicago, Illinois.

13. Defendant Cendant Travel Distribution Services Group, Inc. is a Delaware corporation with its principal place of business in Parsippany, New Jersey.

14. Defendant Expedia, Inc. is a Washington corporation with its principal place of business in Bellevue, Washington.

15. Defendant Internetwork Publishing Corp. (d/b/a Lodging.com) is a Florida corporation with its principal place of business in Boca Raton, Florida.

16. Defendant Lowestfare.com, Inc. is a Delaware corporation with its principal place of business in Norwalk, Connecticut.

17. Defendant OneTravel Holdings, Inc. is a Delaware corporation with its principal place of business in Atlanta, Georgia, in Fulton County.

18. Defendant OneTravel, Inc. is a Texas corporation with its principal place of business in East Greenville, Pennsylvania.

19. Defendant Orbitz, Inc. is a Delaware corporation with its principal place of business in Chicago, Illinois.

20. Defendant Orbitz, LLC is a Delaware limited liability company with its principal place of business in Chicago, Illinois.

21. Defendant Priceline.com, Inc. is a Delaware corporation with its principal place of business in Norwalk, Connecticut.

22. Defendant Site59.com, LLC is a Delaware limited liability company with its principal place of business in New York, New York.

23. Defendant Travelocity.com, Inc. is a Delaware corporation with its principal place of business in Texas.

24. Defendant Travelocity.com, LP is a Delaware limited partnership with its principal place of business in Texas.

25. Defendant Travelnow.com, Inc. is a Delaware corporation with its principal place of business in Springfield, Missouri.

26. Many of the Defendants are subsidiaries of the same holding company, and accordingly, many of the websites operated by Defendants are affiliated with one another:

- a. Defendant OneTravel Holdings, Inc. (formerly RCG Companies, Inc.) is the parent and/or affiliate of Defendant OneTravel, Inc. The "OneTravel Group" operates websites including, but not limited to, 1800cheapseats.com, Cheapseats.com and Discounthotel.com.
- b. Defendants Hotels.com, L.P., Hotels.com GP, LLC, Hotwire, Inc., Travelnow.com, Inc. and Expedia, Inc. are all subsidiaries and/or affiliates of Expedia, Inc., a Delaware corporation. The "Expedia Group" operates websites including, but not limited to, Expedia.com, Hotels.com and Hotwire.com.
- c. Defendants Orbitz, Inc., Orbitz, LLC, Cheaptickets.com, Inc., Internetwork Publishing Corp. (d/b/a Lodging.com) and Cendant Travel Distribution Services Group, Inc. are all subsidiaries and/or affiliates of Cendant Corporation, a Delaware Corporation. The "Cendant Group" operates websites including, but not limited to, Orbitz.com,

Cheaptickets.com and Lodging.com. In addition to owning the aforementioned Cendant Group Defendants, Cendant Corporation is a franchisor of over 6,000 hotels worldwide, operating numerous well known hotel chains that include Ramada, Days Inn, Travelodge and Howard Johnson. Defendants regularly advertise and sell Rooms in hotels franchised by Cendant Corporation that are located in the City.

- d. Defendants Travelocity.com, Inc., Travelocity.com, LP and Site59.com are all subsidiaries and/or affiliates of Sabre Holdings Corporation ("Sabre"), a Delaware Corporation. The "Sabre Group" operates websites including, but not limited to, Travelocity.com and Site59.com.
- e. Defendant Priceline.com, Inc. is the parent and/or affiliate of Lowestfare.com, Inc. The "Priceline Group" operates websites including, but not limited to, Priceline.com and Lowestfare.com.

27. Defendants regularly enter into marketing and distribution agreements and engage in partnerships, alliances and joint ventures with one another for the purpose of selling and or reselling hotel rooms in Atlanta. Specifically and by way of example,

- a. Defendant Orbitz, Inc. entered into an agreement with Travelweb, LLC, a subsidiary of Defendant Priceline, Inc., through which Orbitz received prepaid inventory from Travelweb founders for display on its website.
- b. Defendant Hotels.com and Defendant Travelocity entered into a cross-selling agreement through which Hotels.com offered its inventory on Travelocity's web site.

- c. On or about June 30, 2005, Defendants Orbitz and Priceline entered into a Travel Marketing Agreement under which Priceline became Orbitz's exclusive marketing partner for certain hotel reservations.
- d. Defendants Expedia, Hotels.com, Orbitz, Hotwire, Cendant and Priceline, along with Sabre, are business partners of TripAdvisor, LLC, a wholly owned subsidiary of Expedia, Inc. TripAdvisor, LLC operates TripAdvisor.com, a website that advertises and links to its business partners' websites for the sale or resale of hotel rooms.
- e. Defendant Cheaptickets.com has entered into separate agreements for access to hotel inventory with Defendants Hotels.com and Lodging.com
- f. Cendant Corporation's Hotel Group, an affiliate of Cendant Travel Distribution Services Group, contracted with Defendants Expedia.com and Hotels.com for the online distribution of its Super8, Days Inn, Ramada, Travelodge, Howard Johnson, Knights Inn, Villager, Wingate Inn and Amerihost hotel rooms.
- g. Defendants Hotels.com and Expedia.com entered into an agreement for full scale cooperation and cross-selling initiatives.
- h. Defendant Site59.com has entered into distribution agreements with Defendants Travelocity.com, Orbitz.com, Cheaptickets.com and Priceline.com.

- i. Defendant Lowestfare.com utilized Defendant Hotels.com's room reservation service for inventory and bookings prior to Lowestfare.com moving to Travelweb, LLC for these services.

28. At all relevant times, Defendants have adhered to shared business models, used common or similar technologies, uniformly failed to remit applicable taxes as outlined in this Complaint, communicated with one another and participated jointly in trade associations such as the Interactive Travel Services Association ("ITSA"), and otherwise acted in concert and jointly in their industry-wide failure to remit applicable taxes under shared business models.

29. The City avers that Defendants' conduct and business practices involve common uniform actions. Furthermore, Defendants' affiliations with one another and their shared partnerships in the sale of hotel rooms make their actions connected and logically related.

30. This court has jurisdiction over the parties and this action. Defendant OneTravel Holdings, Inc. maintains its principal place of business in Fulton County. The remaining Defendants transact and solicit substantial and regular business within the State of Georgia, including (as described in further detail elsewhere in this Complaint) renting Rooms located in Fulton County and the City to persons in Georgia and elsewhere. Defendants derive substantial revenue from their business activities in Georgia. Defendants' tortious conduct, as described more fully below, has injured the Plaintiff in Fulton County. Accordingly, all Defendants located outside of Georgia are subject to the jurisdiction of this Court under O.C.G.A. § 9-10-91.

31. Venue is proper in this Court pursuant to O.C.G.A. §§ 9-10-30 and 9-10-

93 because the Plaintiff and Defendant OneTravel Holdings, Inc. are located in Fulton County.

FACTUAL BACKGROUND

A. The Hotel/Motel Tax

32. Pursuant to O.C.G.A. § 48-13-51, the City is authorized to levy and collect a tax on the furnishing for value to the public of Rooms furnished by hotels, motels or similar lodging establishments located within the City's tax district. (See Exhibit A, O.C.G.A. § 48-13-51). The express purpose of the tax authorized by O.C.G.A. § 48-13-51 is to fund and promote tourism, conventions and trade in the State of Georgia. Pursuant to O.C.G.A. § 48-13-51(a)(1)(B)(ii), the tax is imposed on "every person who is a hotel or motel guest and who receives a room, lodging or accommodation that is subject to the tax levied under this Code section." The same section provides that "The person or entity collecting the tax from the hotel or motel guest shall remit the tax to the governing authority imposing the tax".

33. The City levies a tax of seven percent of the total amount of rent paid for every occupancy of a guestroom in a hotel in the city. The tax is set forth in Section 146-76, *et seq.*, of the City's Code of Ordinances (the "Code") (See Exhibit B, Code §§ 146-76 *et seq.*). The funds collected pursuant to the Hotel/Motel Tax are used to finance essential tourist and trade destinations in the City including the Georgia Dome, Georgia World Congress Center, the Atlanta Civic Center and Underground Atlanta, to fund tourism and trade development campaigns, and generally to promote the tourism and convention industries in Atlanta.

34. The amount of the Hotel/Motel Tax is properly calculated as 7 percent of

the total consideration paid by the hotel occupant in order to obtain the right to occupy a Room. Code Section 146-76 defines rent as

“the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also the amount for which credit is allowed by the operator to the occupant, without any deduction therefrom.” (emphasis added).

35. The total rental rate is necessarily determined by the total amount paid by hotel patrons to Defendants in order to secure the right to use the subject Rooms.

36. As with many business and transaction taxes levied by the City, the Hotel/Motel Tax is not collected directly by the City, for it is not feasible for the City to do so. Instead, O.C.G.A. § 48-13-51 and the Code provide a mechanism through which private parties who rent Rooms collect and remit the tax. Through this mechanism, Defendants are required to collect occupancy taxes from customers at a rate of 7 percent of the total Room rental rate and to remit this amount to the City on a monthly basis.

37. To facilitate the collection of tax, the Code requires operators who collect or intend to collect occupancy taxes to register with the City’s chief financial officer. “Operator” is defined in the Code as “any person operating a hotel in the city, including but not limited to the owner or proprietor of the premises, lessee, sublessee, lender in possession, license to or any other person otherwise operating the hotel.”

38. As operators for the purpose of tax collection and remittance, Defendants are required to register with the City.

39. Operators who collect occupancy taxes are also required to file monthly

returns with the City indicating, among other things, the gross rent, taxable rent, and amount of tax collected or otherwise due for the monthly period. (Exhibit A, Code § 146-85).

40. In addition, operators who collect taxes are required to maintain records, receipts, invoices and other papers relating to Room rentals and taxes collected. (Exhibit A, Code § 146-77).

41. Defendants, as operators for the purpose of tax collection and remittance, are subject to these reporting requirements.

42. Code § 146-78 states that “[a]ny person violating this article shall be deemed guilty of an offense”. The Code also delineates certain specific offenses relating to tax collection and remittance. It is an offense under the Code for a person acting as an operator collecting taxes to fail to register with the City as required, or to fail to file required tax returns. (Exhibit A, Code § 146-78).

B. Description of the Defendants’ Business

43. All Defendants are owners and/or operators of numerous third-party travel booking services that conduct their business primarily on the Internet. Collectively, Defendants own and/or operate several proprietary websites, including Expedia.com, Travelocity.com, Priceline.com, Hotels.com, Orbitz.com, Cheaptickets.com, Cheapseats.com, DiscountHotel.com, Hotwire.com and Lodging.com.

44. Defendants employ either or both of two distinct business models in their hotel booking business. Under what is commonly known in the industry as the “Merchant Model”, Defendants enter into agreements with “brick and mortar” hotels to purchase Rooms (usually in bulk) at wholesale rates, then resell the Rooms to the public

at a markup. For instance, a Defendant may purchase a Room from a hotel for \$70, then resell the Room to one of its customers for \$100, or a markup of \$30.

45. Under a separate model often referred to as the “Agency Model”, Defendants do not purchase Rooms but instead contract for the right to sell the Rooms to the public, acting as an agent for the hotel in selling Rooms to the public. In an Agency Model transaction, Defendants receive a fee from the hotel that is part of the retail Room rate quoted to hotel patrons. For instance, in an Agency Model transaction, the Defendant may rent a Room to its customer for \$100, then pass on \$70 to the hotel and retain the balance of \$30 as its “fee”.

46. Having obtained either the Rooms themselves or the right to rent Rooms depending on the business model involved, Defendants then advertise and market the Rooms for rent on their proprietary websites (or, as the case may be, on websites operated by their strategic partners).

Defendants’ Collection of Taxes and Failure to Remit Same

47. Under either the Merchant Model or the Agency Model, Defendants charge their online customers the Hotel/Motel Tax based on the full advertised room rate. Defendants then remit, indirectly through the hotel, only the portion of tax based on the net rate received by the hotel. Defendants retain the rest of the Hotel/Motel Tax.

48. Customers who use Defendants’ websites are invited to search for Rooms by location, date, price, amenities and other variables. The result of the search is typically a menu of available Rooms at specific quoted rates.

49. In addition to the price quotes, Defendants’ websites typically provide

detailed information about the hotel, including photographs, directions and lists of nearby attractions, reviews and customer comments.

50. Therefore, by completely assuming the function of advertising, marketing and selling the right to use Rooms that are ultimately furnished by hotels, Defendants at all relevant times have functioned as operators of the hotels under both the Merchant Model and the Agency Model.

51. Once a customer selects the Room that he or she desires, the customer is taken to a booking screen. On the booking screen, the customer is presented with the quoted Room rate, along with an additional charge that is typically labeled “taxes and fees”.

52. The amount charged as “taxes and fees” typically exceeds the sum of all taxes that are applicable on the total quoted Room rate. For instance, in the City, where Rooms are subject to a total of 15 percent in taxes (including the City’s 7 percent Hotel/Motel Tax), a customer who selects a Room quoted at \$100 per night will typically be charged between \$15 and \$20 per night in “taxes and fees”.

53. Defendants’ websites do not, at any point, unbundle the components of “taxes and fees”, nor do they identify the applicable taxes that are actually remitted or disclose the applicable tax rates.

54. At the conclusion of the booking process, Defendants charge the total rental, consisting of the quoted room rate plus the amount charged in “taxes and fees”, to the customer’s credit card.

55. At the time the customer’s credit card is charged or shortly thereafter, the

customer receives a confirmation e-mail from the booking website containing a confirmation ID number.

56. The confirmation ID given by Defendants, once presented to the hotel at check-in, gives the customer the right to occupy the Room.

57. At check-in, the customer typically presents the hotel with a credit card; however, the hotel does not charge any amount to the card at that time, because the customer has already paid a Defendant's website for the Room.

58. The customer does not pay any amounts to the hotel unless he or she incurs "incidental" charges such as long distance telephone use, room service or pay-per-view movies.

59. Thus, the Defendants effectively function as operators for the purposes of collecting money from the customer for the rental of the room and for collecting taxes.

60. Defendants do not disclose to the hotels the price paid to them by their customers for Rooms that they rent.

61. While the Defendants collect the applicable occupancy taxes in full from their customers, as described in the above paragraphs, they do not themselves remit any tax to the City. Instead, Defendants only remit, indirectly through the hotels, Hotel/Motel Taxes based on the net rate received by the hotel—an amount substantially less than the total taxable room rate charged to the consumer by Defendants. Defendants retain the remainder as their profit from the transaction, including amounts that they collected from the customer as tax.

62. For example, when a Defendant using the Merchant Model obtains a

Room for \$70 and resells it at \$100, the Defendant charges the customer an amount in “taxes and fees” sufficient to cover all applicable taxes on the \$100 sale price, but the City only receives Hotel/Motel Taxes on the \$70 received by the hotel. Instead of receiving \$7.00, the proper amount of Hotel/Motel Tax calculated as 7 percent of the \$100 sale price, the City receives \$4.90, or 7 percent of \$70. Upon information and belief, when a Defendant acting as a seller or using the Agency Model rents a room to a customer for \$100 and retains \$30, the Defendant again charges the customer an amount in “taxes and fees” sufficient to cover all applicable taxes on the \$100 sale price, but the City receives taxes only on the \$70 received by the hotel, and not on the portion retained by the Defendant. Again, the City receives only \$4.90 in Hotel/Motel Taxes rather than the correct amount of \$7.00.

63. Defendants do not disclose to their customers the net Room rate received by the hotel upon which Hotel/Motel Taxes are actually remitted. This net rate is unrelated to the actual Room rate paid by customers and is unknown to the customers and the City.

64. Defendants have admitted that they do not pay taxes on the portion of Room rental rates that they retain as profit. In public filings made by the Defendants either directly or through parent companies that report to the Securities and Exchange Commission, Defendants acknowledge that they do not remit taxes and that the only taxes remitted are those remitted by the hotel based on a lesser, undisclosed net Room rate. Defendants also claim that they do not collect these taxes, a claim that is belied by their regular practice of charging “taxes and fees” sufficient to cover all applicable taxes on the quoted Room rate.

65. For example, in Defendant Priceline.com, Inc.'s Form 10-Q filed on November 9, 2005, the company states:

On an ongoing basis, the Company conducts a review and interpretation of the tax laws in various states and other jurisdictions relating to the payment of state and local hotel occupancy and other related taxes. In connection with its review, the Company has met and had discussions with taxing authorities in certain jurisdictions but the ultimate resolution in any particular jurisdiction cannot be determined at this time. Currently, hotels collect and remit hotel occupancy and related taxes to the various tax authorities based on the amounts collected by the hotels. Consistent with this practice, the Company recovers the taxes on the underlying cost of the hotel room night from customers and remits the taxes to the hotel operators for payment to the appropriate tax authorities

66. Similarly, Sabre Holdings Corporation, the parent company to Defendants Travelocity.com, Inc., Travelocity.com, LP and Site59.com, states in its Form 10-Q filed on November 4, 2005:

Some state and local taxing authorities impose taxes on the sale, use or occupancy of hotel room accommodations, which are called transient, occupancy, accommodation, sales or hotel room taxes. Hotel operators generally collect and remit these occupancy taxes. Consistent with that practice, when a customer books a hotel room through one of our travel services under our net rate hotel program, we collect from the customer an amount sufficient to pay the hotel its room charge and the occupancy taxes on that charge, as well as an additional amount that represents our fees. We do not collect or remit occupancy taxes on our fees. Some tax authorities claim that occupancy taxes should be collected on some or all of those fees.

COUNT I PRELIMINARY AND PERMANENT INJUNCTION

67. The City incorporates each of the above allegations as if fully set forth herein.

68. Defendants have deprived and are continuing to deprive the City of Hotel/Motel Tax funds that are specifically tied to tourism-related attractions and projects that serve a vital public purpose. Defendants' failure to pay Hotel/Motel taxes threatens

to erode the City's Hotel/Motel Tax base, as tourism development funds are necessary to attract new visitors and conventions, which in turn provide multiple sources of new revenue and funding for public projects. Defendants have also violated and are continuing to violate reporting requirements in an attempt to conceal from both the City and the public their misappropriation of tax funds.

69. The City is likely to prevail on the merits in this case. Defendants' conduct violates O.C.G.A. § 48-13-51 and the applicable city ordinances because they are required to collect Hotel/Motel Taxes from their customers, and actually do collect an amount in "taxes and fees" sufficient to cover the proper amount of Hotel/Motel Tax, but do not remit, either directly or indirectly, the proper amount of occupancy tax to the City.

70. The City will be substantially and irreparably harmed if a preliminary and permanent injunction are not issued requiring Defendants to register and make filings as required by Code §§ 146-77 and 146-85, respectively, and to remit Hotel/Motel Taxes based on the full consideration paid by customers to Defendants for the right to occupy Rooms in the City. The funds misappropriated and held by Defendants are public funds that are designated for use to finance existing tourist and trade attractions in the City, and to promote and develop new opportunities for tourism and trade in the City. Funds collected pursuant to the Hotel/Motel Tax are specifically tied to certain tourism-related expenditures, all of which are intended to further the public interest. Any harm caused by a shortfall of such tax funds, and by the Defendants' ongoing and open failure to remit taxes as they come due, cannot be sufficiently cured by a later money award. Furthermore, other taxing jurisdictions have filed Complaints against many or all of the same Defendants alleging the same unlawful practices, raising the possibility that

Defendants will not have sufficient funds available to pay a money judgment if the City does not obtain immediate injunctive relief. At a minimum, the City's ability to recover money at a future time will be severely diminished.

71. The City has no adequate remedy at law for Defendants' failure to remit the full amount of applicable taxes owed to the City and their concealment of the same.

72. The threatened injury to the City, along with the substantial injury suffered by the City's taxpayers and the public at large due to Defendants' misappropriation of public funds and their concealment of their tax collection practices from their customers, substantially outweighs any threatened harm that a preliminary and permanent injunction could conceivably do to Defendants.

73. Accordingly, the City is entitled to a preliminary and permanent injunction requiring Defendants to (1) remit occupancy taxes to the City based on the full consideration paid by customers for the right to occupy Rooms in the City and (2) identify, categorize and quantify the required taxes that have been paid to them and not remitted to the City.

COUNT II **DECLARATORY JUDGMENT**

74. The City incorporates each of the above allegations as if fully set forth herein.

75. Defendants' failure to remit Hotel/Motel Taxes already owed to the City and their continuing failure to remit the full amount of applicable taxes owed to the City have created an actual controversy between Defendants and the City.

76. Accordingly, the City seeks a declaratory judgment pursuant to O.C.G.A.

§ 9-4-1 *et seq.* (a) declaring that Defendants furnish Rooms in accordance with Code § 146-76 *et seq.*, (b) establishing that Defendants are operators of hotels and motels as defined in the Code, (c) directing Defendants to register and make filings in accordance with Code §§ 146-77 and 146-85, (d) establishing that the Defendants are liable for unpaid Hotel/Motel Taxes based on the full consideration that is paid by customers for the right to occupy Rooms in the City and (e) directing Defendants, going forward from the time of the judgment or order, to remit Hotel/Motel Taxes based on the full consideration paid by customers for the right to occupy Rooms in the City.

77. The City seeks expedited discovery and trial as allowed by the Declaratory Judgment Act.

COUNT III
VIOLATIONS OF OCCUPANCY TAX LAWS AND ORDINANCES
(O.C.G.A. § 48-13-50 et. seq. and City of Atlanta Code of Ordinances § 146-76 et seq.)

78. The City incorporates each of the above allegations as if fully set forth herein.

79. The City is authorized under O.C.G.A. § 48-13-51 to levy and collect, and pursuant to this authority levies and collects a tax on the furnishing for value to the public of Rooms furnished by hotels, motels and/or other proprietors of lodging establishments as enumerated in O.C.G.A. § 48-13-51. The City levies and collects a tax of 7 percent of the total rental rate paid by the hotel occupant in order to secure the right to occupy the Room.

80. Defendants are required, either as operators of hotels, motels and other

lodging establishments in the City for purposes of administering the Hotel/Motel Tax, or as agents of operators, to collect and remit taxes in the amount of 7 percent of the total rental rate paid by the hotel occupant in order to secure the right to occupy the Room.

81. Alternatively, even if the Defendants are not deemed operators and therefore were not required to collect tax, the fact that they do collect all of the applicable tax that is owed and yet do not remit any tax constitutes an independent violation of the statutes and ordinance, and the amounts actually collected are owed to the City.

82. Defendants have violated the above statutes and ordinances by failing to remit to the City the full amount due and owing to it. Defendants' underpayment of tax constitutes a debt owed by the Defendants to the City. The City is entitled to collect from Defendants the deficiency between the total amount of tax applicable to all of Defendants' sales and rentals of Rooms located in the City and the amount of tax actually remitted to the City in connection with Defendants' sales and rentals of such Rooms.

83. In addition, Defendants are liable for a penalty in the amount of 15 percent of their respective tax deficiencies, as well as interest at a rate of one percent per month as provided in Code § 146-87.

84. The exact amount of recoverable taxes, penalties and interest cannot be determined without an equitable accounting because Defendants have concealed the amount of Hotel/Motel taxes actually remitted from the City by failing to file required tax returns.

COUNT IV **CONVERSION**

85. The City incorporates each of the above allegations as if fully set forth herein.

86. At all times alleged herein, the City is and has been the rightful owner of the taxes due and owing to them under O.C.G.A. § 48-13-50, *et seq* and Code § 146-76 *et seq*.

87. At all times alleged herein, Defendants were in the possession of monies owed to the City in the way of taxes collected by Defendants but not remitted. In doing so, Defendants have taken possession of the City's property for their own use and benefit, thereby depriving the City of the same. As a direct and proximate result of Defendants' conduct, the City has suffered damages in an amount to be proven at trial.

COUNT V
UNJUST ENRICHMENT

88. The City incorporates each of the above allegations as if fully set forth herein.

89. As a result of Defendants' acts and omissions alleged herein, Defendants have unjustly received and retained a benefit to the detriment of the City and its residents, and Defendants' retention of this benefit violates fundamental principles of justice, equity and good conscience. The specific sum of money by which Defendants have been unjustly enriched can only be identified from information and records in Defendants' possession and control.

90. The City is entitled to the return of all amounts owed to it, as determined through a legal and equitable accounting of the amounts by which the Defendants unjustly enriched themselves.

COUNT VI
IMPOSITION OF CONSTRUCTIVE TRUST

91. The City incorporates each of the above allegations as if fully set forth

herein.

92. At all times alleged herein, the City's monies were in the possession and under the control of the Defendants. Defendants have taken this property for their own use and benefit, thereby depriving the City of the use and benefit thereof. The City and its residents have been damaged by their failure to receive the monies.

93. By virtue of Defendants' actions, Defendants hold these funds as constructive trustee for the benefit of the City. The City requests an order that Defendants be directed to transfer possession of said funds to the City, along with statutory interest on said funds from the date on which the City obtained the right to payment

COUNT VII
DEMAND FOR EQUITABLE ACCOUNTING

94. The City incorporates each of the above allegations as if fully set forth herein.

95. Defendants were under a legal obligation, pursuant to O.C.G.A. § 48-13-51 and Code § 146-76 *et seq*, to collect and remit taxes to the City on the full amounts of consideration received by them in exchange for the right to occupy Rooms in the City.

96. Defendants have failed to remit to the City the full amounts of tax due and owing to the City.

97. Furthermore, as operators for purposes of the City's Hotel/Motel Tax, Defendants were and are obligated to register with the City, to maintain books, records, receipts and other papers relating to their collection of tax, and to file monthly tax returns indicating, among other things, the gross rent, taxable rent, and tax actually collected or

due for Rooms rented during the monthly period. Defendants have failed to register and to submit the monthly tax returns described above.

98. The amounts collected by Defendants on behalf of the City but not remitted to the City are held in constructive trust for the benefit of the City. Defendants have commingled these amounts with their own funds thus rendering an equitable accounting necessary to determine the correct amount that is owed to the City. Furthermore, the determination of the amount of taxes owed to the City is complex, because it is dependent on recovering data from numerous transactions between Defendants and hotels, as well as records of all of Defendants' transactions with their customers for the rental of Rooms located in Atlanta.

99. For these reasons, the City is entitled to an equitable accounting of each Defendant regarding the number of Rooms they have rented in the City, the total consideration received by Defendants for such rentals, the amount of taxes actually collected, the amount of taxes actually remitted either directly or indirectly to the City, and the amount received by the hotel in connection with each Room rental. This accounting should encompass the entire time period during which Defendants have failed to remit taxes on the full Room rate and consideration they receive for the sale of Rooms as described in this Complaint.

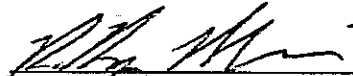
WHEREFORE, the City respectfully prays that the Court:

- a) Award damages, including statutory penalties and interest, to the City;
- b) Enter an order declaring that Defendants hold occupancy tax funds in an amount to be proven at trial, together with statutory interest, in constructive trust for the benefit of the City;

- c) Enter an order requiring an equitable accounting, then disgorgement and restitution by Defendant of all funds owed to the City, together with statutory interest;
- d) Enter a preliminary and permanent injunction requiring Defendants to register and make filings with respect to the collection and remittance of the Hotel/Motel Tax;
- e) Enter a preliminary and permanent injunction requiring Defendants to collect and remit occupancy tax on the full consideration that is paid by customers for the right to occupy Rooms in the City.
- f) Award the City its costs incurred in connection with this suit, including reasonable attorneys' fees; and
- g) Grant the City such other and further relief as this Court may deem just and proper.

CITY OF ATLANTA DEPARTMENT OF LAW

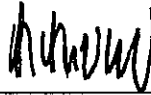
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Atlanta, Georgia 30303

POWELL GOLDSTEIN LLP

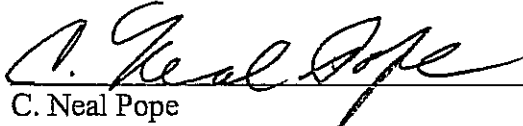
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SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

CITY OF ATLANTA, GEORGIA,

Plaintiff,

vs.

CIVIL ACTION NO. _____

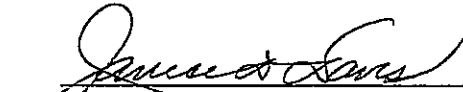
HOTELS.COM, L.P.; HOTELS.COM
GP, LLC; HOTWIRE, INC.; CHEAP
TICKETS INC.; CENDANT TRAVEL
DISTRIBUTION SERVICES GROUP,
INC.; EXPEDIA, INC.;
INTERNETWORK PUBLISHING
CORP. (d/b/a LODGING.COM);
LOWESTFARE.COM, INC.;
ONETRAVEL HOLDINGS, INC.;
ONETRAVEL, INC.; ORBITZ, INC.;
ORBITZ, LLC; PRICELINE.COM,
INC., SITE59.COM, LLC;
LLC, TRAVELOCITY.COM, INC.,
TRAVELOCITY.COM, LP, and
TRAVELNOW.COM, INC.

Defendants.

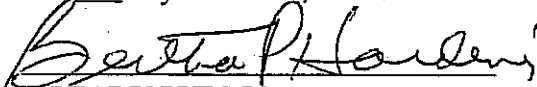
VERIFICATION

Before an officer authorized by law to administer oaths appeared Janice D. Davis, who on oath, states that she is the Chief Financial Officer of the City of Atlanta, that she is authorized to verify the facts contained in the foregoing Verified Complaint Seeking Injunctive Relief and Damages, and that the facts contained therein are true and correct to the best of her knowledge and belief.

This 27th day of March, 2006.


Janice D. Davis
Chief Financial Officer
City of Atlanta

Sworn to and subscribed before me
this 27 day of March, 2006.


NOTARY PUBLIC

My Commission Expires:
Notary Public, Fulton County, Georgia
My Commission Expires January 30, 2009
[NOTARIAL SEAL]